

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAIRO LIZARAU, derivatively on behalf of
EVOLUS, INC.,

Plaintiff,

vs.

DAVID MOATAZEDI, RUI AVELAR,
LAUREN P. SILVERNAIL, VIKRAM MALIK,
SIMONE BLANK, PETER C. FARRELL,
DAVID GILL, BOSUN HAU, ROBERT
HAYMAN, KARAH PARSCHAUER, and
KRISTINE ROMINE,

Defendants,

and

EVOLUS, INC.,

Nominal Defendant.

Case No. 1:20-cv-09986-PGG

HYUNSOOK YU, Derivatively On Behalf Of
EVOLUS, INC.,

Case No.: 1:20-cv-10118-AT

Plaintiff,

vs.

DAVID MOATAZEDI, VIKRAM MALIK,
SIMONE BLANK, PETER C. FARRELL,
DAVID GILL, ROBERT HAYMAN, KARAH
PARSCHAUER, LAUREN P. SILVERNAIL
AND RUI AVELAR,

Defendants,

And

EVOLUS, INC.,

Nominal Defendant.

**JOINT STIPULATION AND [PROPOSED] ORDER
CONSOLIDATING RELATED SHAREHOLDER DERIVATIVE ACTIONS AND
ESTABLISHING A LEADERSHIP STRUCTURE**

WHEREAS on November 27, 2020, Plaintiff Jairo Lizarau filed a shareholder derivative action on behalf of Nominal Defendant Evolus, Inc. (“Evolus” or the “Company”) in this Court alleging violations of Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), breaches of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and for contribution under Sections 10(b) and 21D of the Exchange Act against defendants David Moatazedi, Rui Avelar, Lauren P. Silvernail, Vikram Malik, Simone Blank, Peter C. Farrell, David Gill, Bosun Hau, Robert Hayman, Karah Parschauer, and Kristine Romine (collectively, the “Individual Defendants” and together with Evolus the “Defendants”), captioned *Lizarau v. Moatazedi, et al.*, Case No. 1:20-cv-09986-PGG (the “*Lizarau Action*”);

WHEREAS on December 2, 2020, Plaintiff Hyunsook Yu filed a shareholder derivative action alleging substantially similar facts and making claims for contribution under Sections 10(b) and 21D of the Exchange Act, breach of fiduciary duty and waste of corporate assets against defendants David Moatazedi, Vikram Malik, Simone Blank, Peter C. Farrell, David Gill, Robert Hayman, Karah Parschauer, Lauren P. Silvernail, and Rui Avelar in this Court, captioned *Yu v. Moatazedi, et al.*, Case No. 1:20-cv-10118 (the “*Yu Action*,” and together with the *Lizarau Action*, the “Related Derivative Actions”);

WHEREAS Plaintiff Lizarau designated his action as related to an earlier-filed, consolidated putative securities class action in this Court, *In re Evolus Inc. Securities Litigation*, No. 1:20-CV-08647-PGG, (“Securities Litigation”) because they “concern substantially similar facts relating to several of the same defendants during overlapping time periods” (ECF No. 4);

WHEREAS on December 9, 2020, Evolus was served with the summons and complaint in the *Lizarau* Action;

WHEREAS, on December 10, 2020, the Court scheduled an Initial Pretrial Conference in the *Lizarau* Action for February 11, 2021, and ordered the parties to submit before the conference a joint letter and case-management plan (ECF No. 7); WHEREAS under Fed. R. Civ. P. 42(a), when actions involve “a common question of law or fact,” the Court may “(1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay”;

WHEREAS the Related Derivative Actions challenge substantially the same alleged conduct by substantially the same defendants, and involve substantially the same questions of law and fact;

WHEREAS the parties therefore respectfully submit that consolidation of the Related Derivative Actions is appropriate;

WHEREAS to avoid potentially duplicative actions and to prevent any waste of the Court’s and nominal defendant’s resources, the parties agree that the Related Derivative Actions should be consolidated for all purposes, including pre-trial proceedings and any trial, into a single consolidated action;

WHEREAS in order to realize the efficiencies made possible by consolidation of the Related Derivative Actions, Plaintiffs Jairo Lizarau and Hyunsook Yu (“Plaintiffs”) agree that The Brown Law Firm, P.C. and Gainey McKenna & Egleston, the respective resumes of which are attached hereto as Exhibits A and B, shall be designated as Co-Lead Counsel representing plaintiffs in the consolidated action;

WHEREAS the parties have conferred as to whether the Related Derivative Actions should be temporarily stayed in light of the Securities Litigation, and intend to continue to confer on this issue;

WHEREAS the parties have conferred and agree that it would save judicial and party resources to (i) adjourn the deadline for all Defendants to move, answer, or otherwise respond to the Complaints in the Related Derivative Actions; and (ii) continue the February 11, 2021 Initial Pretrial Conference and associated deadlines; and

WHEREAS no prior stipulation or request for an extension has been filed;

WHEREFORE, the parties, through their undersigned counsel, hereby agree, stipulate, and respectfully request that the Court enter an Order as follows:

1. The following actions are hereby consolidated for all purposes, including pre-trial proceedings and any trial, under Case No. 1:20-cv-09986-PGG (the “Consolidated Action”), pursuant to Federal Rule of Civil Procedure 42(a):

<u>Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Lizarau v. Moatazedi, et al.</i>	1:20-cv-09986-PGG	November 27, 2020
<i>Yu v. Moatazedi, et al.</i>	1:20-cv-10118-AT	December 2, 2020

2. Every pleading filed in the Consolidated Action, or in any separate action included herein, must bear the following caption:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE EVOLUS, INC. DERIVATIVE
LITIGATION

Lead Case No. 1:20-cv-09986-PGG

3. All papers filed in connection with the Consolidated Action will be maintained in one file under Lead Case No. 1:20-cv-09986-PGG.

4. The undersigned counsel for Defendants hereby accepts personal service of the complaints filed in the *Lizarau* Action and the *Yu* Action on behalf of all Defendants as of today's date, but each Defendant expressly reserves all rights, defenses, and other objections (other than insufficient process or insufficient service of process).

5. Co-Lead Counsel for plaintiffs for the conduct of the Consolidated Action shall be:

THE BROWN LAW FIRM, P.C.

Timothy Brown
Saadia Hashmi
240 Townsend Square
Oyster Bay, New York 11771
Telephone: (516) 922-5427
Facsimile: (516) 344-6204
Email: tbrown@thebrownlawfirm.net
Email: shashmi@thebrownlawfirm.net

GAINEY McKENNA & EGLESTON

Thomas J. McKenna
Gregory M. Egleston
501 Fifth Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gme-law.com
Email: gegleston@gme-law.com

6. Plaintiffs' Co-Lead Counsel shall have the sole authority to speak for plaintiffs in all matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

7. Co-Lead Counsel shall be responsible for coordinating all activities and appearances on behalf of plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings will be initiated or filed by any plaintiffs except through Co-Lead Counsel.

8. Defendants' counsel may rely upon all agreements made with Co-Lead Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all plaintiffs.

9. This Order shall apply to each derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Action, that is subsequently filed in, removed to, reassigned to, or transferred to this Court. When a derivative case that properly belongs as part of *In re Evolus, Inc. Derivative Litigation*, Lead Case No. 1:20-cv-09986, is hereafter filed in this Court, reassigned to this Court, or transferred here from another court, this Court requests the assistance of counsel in calling to the attention of the Clerk of the Court the filing, reassignment, or transfer of any derivative case that might properly be consolidated as part of *In re Evolus, Inc. Derivative Litigation*, Lead Case No. 1:20-cv-09986 , and counsel are to assist in assuring that counsel in subsequent actions receive notice of this order.

10. The parties shall submit a proposed schedule to the Court within thirty (30) days of entry of this Order.

11. Defendants are not required to move, answer or otherwise respond to the respective complaints filed in the Consolidated Action except as set forth in the Court's order on the parties' proposed schedule. Defendants shall likewise not be required to move, answer or otherwise respond to any substantially similar derivative complaints that are subsequently filed and consolidated into the Consolidated Action.

12. This Stipulation is without prejudice to any and all defenses Defendants may assert in this or any of the above-referenced actions and without prejudice to any and all claims plaintiffs may assert.

IT IS SO STIPULATED.

Respectfully submitted,

December 29, 2020

THE BROWN LAW FIRM, P.C.

/s/Timothy Brown

Timothy Brown
Saadia Hashmi
240 Townsend Square
Oyster Bay, New York 11771
Telephone: (516) 922-5427
Facsimile: (516) 344-6204
Email: tbrown@thebrownlawfirm.net
Email: shashmi@thebrownlawfirm.net

[Proposed] Co-Lead Counsel for Plaintiffs

December 29, 2020

GAINEY McKENNA & EGLESTON

/s/ Thomas J. McKenna

Thomas J. McKenna
Gregory M. Egleston
501 Fifth Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gme-law.com
Email: gegleston@gme-law.com

[Proposed] Co-Lead Counsel for Plaintiffs

December 29, 2020

O'MELVENY & MYERS LLP

/s/ Jonathan Rosenberg

Jonathan Rosenberg
B. Andrew Bednark
7 Times Square
New York, New York 10036
Telephone: (212) 408-2409
Facsimile: (212) 326-2061
Email: jrosenberg@omm.com
Email: abednark@omm.com

*Counsel for Nominal Defendant Evolus Inc. and
Individual Defendants*

IT IS SO ORDERED this _____ day of _____, 2020

UNITED STATES DISTRICT JUDGE